

# Fact Sheet

## **United States Supreme Court Decision: *Olmstead vs L.C.***

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### **Background:**

*Two women with mild mental retardation who, due to concurrent acute mental disorders, (also diagnosed with schizophrenia and personality disorder, respectively) were voluntarily admitted to a psychiatric unit of a Georgia state hospital. Although the professional staff of the hospital eventually concluded that both women could be cared for appropriately in a community-based program, they remained institutionalized.*

*These two women filed a lawsuit against the state of Georgia alleging, among other things, that their institutionalization amounted to discrimination in violation of Title II (the public services portion) of the Americans with Disabilities Act (ADA). Also at issue in the case was a federal regulation issued under Title II of the ADA which states that a public entity shall administer services, program, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.*

*The United States Supreme Court ultimately agreed to hear arguments on whether the ADA's proscription of discrimination may require placement of persons with mental disabilities in community settings rather than in institutions.*

### **Olmstead Decision**

- Supreme Court held that unjustified isolation is properly regarded as discrimination based on disability.
- The Court recognized the States' need to maintain a full range of facilities and services for individuals with mental disabilities including institutions.
- States are required under Title II of the ADA to place institutionalized persons with disabilities in community settings when:
  1. The state's treating professionals have determined that a community placement is appropriate;
  2. The transfer from an institution to a less restrictive setting is not opposed by the affected individual; and
  3. The placement can be reasonably accommodated, taking into account the resources available to the state and the needs of other persons with mental disabilities.
- The Court emphasized that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings.
- The case was sent back to the Georgia court to determine whether the additional expenditures to treat these two women in community-based care would be unreasonable given the demands of the State's mental health budget.

### **Olmstead Decision DOES NOT:**

- Compel states to phase out institutional services.
- Require fundamental alterations in services.
- Make boundless the state's obligation to provide community-based services to qualified persons with disabilities.

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## **UNRESOLVED QUESTIONS**

### **Some questions generated by this ruling include:**

- What is a "reasonable accommodation" versus a "fundamental alteration"?
- What is the working definition of an institution?
- What constitutes a range of facilities?
- What is a comprehensive, effectively working plan for placing people with disabilities in less restrictive settings?
- What constitutes a waiting list?
- What is a "reasonable pace" for a waiting list?

### **Current status in North Dakota**

- The executive director of the North Dakota Department of Human Services (DHS) commissioned an internal workgroup in the spring of 2000 to review the *Olmstead* decision and to make recommendations on further action.
- An analysis of community-based services currently provided in North Dakota was conducted and a series of four public dialogue sessions was held in August 2000.
- **Workgroup recommendations consisted of:**
  - Request to the governor to appoint a commission to provide the North Dakota definitions inherent to the *Olmstead* decision and to develop a comprehensive state plan.
  - DHS should schedule regular information/discussion sessions with regional stakeholders surrounding community-based services for people with disabilities.
  - DHS should take the lead to develop a pre-assessment screening process that must be completed prior to admission to a nursing facility.
  - DHS should continue to encourage and support the development of alternatives to nursing facility services.

### **OTHER CASES that may affect the applicability of *Olmstead***

- ***University of Alabama Board of Trustees v. Garrett***, U.S. S Ct docket number 99-1240, 193 F.3d 1214 (11<sup>th</sup> Cir. 1999). On February 21, 2001, the United States Supreme Court stated in a 5-4 ruling that suits in federal court by state employees to recover money damages under Title I of the ADA are barred by the Eleventh Amendment. Although mainstream media portrayed this ruling as a blow to the ADA, the ruling is quite narrow and did not affect suits brought against states under Title II of the ADA, which prohibits discrimination by state and local governments in access to buildings and services. Nor did it prevent suits against private businesses under Title I.
- ***Alsbrook v. City of Maumelle***, (8<sup>th</sup> Cir. 1998). The Eighth Circuit court of appeals (North Dakota is one of the states in the eighth circuit) held that the Eleventh Amendment bars suits against states by private citizens under Title II of the ADA. The United States Supreme Court declined to review this decision, and so it continues to be authority in the Eighth Circuit. Thus, states in the Eight Circuit may assert immunity from suits brought in federal court for violation of Title II of the ADA.
- **The full text of the North Dakota Department of Human Services' *Olmstead* White Paper has been posted to the Internet at [www.state.nd.us/humanservices](http://www.state.nd.us/humanservices)) in the *Current Issues/News* section.**

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